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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,688	11/19/2003	Wendell J. Bouknight JR.	RSW920030238US1 (130)	6588
46320 7590 02/24/2009 CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP STEVEN M. GREENBERG 950 PENINSULA CORPORATE CIRCLE SUITE 3020 BOCA RATON, FL 33487				
EXAMINER				
WHIPPLE, BRIAN P				
ART UNIT		PAPER NUMBER		
2452				
MAIL DATE		DELIVERY MODE		
02/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/716,688

**Applicant(s)**

BOUKNIGHT ET AL.

**Examiner**

BRIAN P. WHIPPLE

**Art Unit**

2452

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/30/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-3 and 14-16 are pending in this application and presented for examination.
2. In view of the appeal brief filed on 11/30/08, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

\*\*\*.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-3 and 14-16 have been considered but are moot in view of the new ground(s) of rejection. Additionally, the arguments directed to the prior art relied upon in the rejections below have been previously addressed; see the Office action mailed on 9/24/08.

### ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the varying delays step (see claim 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing

sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakshi et al. (Bakshi), U.S. Patent No. 6,836,785 B1, in view of Dupont, U.S. Patent No. 6,843,800 B2, and further in view of Koval et al. (Koval), U.S. Patent No. 5,339,413.

7. As to claim 1, Bakshi discloses an autonomic buffer configuration method (Abstract, ln. 1-4, "variable sized buffer") comprising the steps of:

monitoring data (Fig. 4, items 410 and 420; Col. 5, ln. 6-11, “wait for an incoming request... the process determines whether a server is in an overloaded state”) flowing through a buffer (Fig. 4, items 440, 470, and 480; Col. 5, ln. 20-29, “the process determines whether the buffer is at an acceptance limit... If the buffer is filled to the acceptance limit, then the process proceeds to step 480; otherwise, the process proceeds to step 470”) in a communications system (Fig. 1; Col. 2, ln. 25-36);

computing an optimal buffer size (Col. 4, ln. 12-16, “alter the capacity of the variable size buffer 302”) based upon a specification of a required percentage (Col. 4, ln. 12-16, “the acceptance limit 306 can be varied between 100% and 0% in order to alter the capacity of the variable size buffer 302”); and

re-sizing said buffer (Col. 4, ln. 9-12, “variable size buffer”) without re-initializing said resized buffer (Col. 4, ln. 14-16, “the acceptance limit 306 can be varied between 100% and 0% in order to alter the capacity of the variable size buffer 302”; Col. 4, ln. 29-44 and 50-54, resizing is performed dynamically in response to the current load on the processor 300, re-initialization is not required as only requests that would push the buffer over full capacity are blocked).

Bakshi is silent on a plurality of buffers;

recording in at least one buffer profile different data sizes for different ones of said data flowing through said buffer during an established interval of time; and

the required percentage being a required percentage of times a buffer must be able to accommodate data of a particular size.

However, Dupont discloses recording in at least one buffer profile different data sizes for different ones of data (Fig. 1, item 60, "Packet Monitor"; Col. 2, ln. 47-49, "monitors incoming data packets to track the size of all of the data packets and to track the frequency at which specific packet sizes are received"; Col. 2, ln. 53-55, "size frequency information may be stored in a frequency look-up table or by other suitably [sic] means") flowing through buffers (Fig. 1; Col. 2, ln. 35-39, "packet monitor 60 monitors and stores information regarding incoming data packets at the input queues 20") during an established interval of time (Col. 2, ln. 47-49, "track the frequency at which specific packet sizes are received", frequency is a function of time); and

a required percentage of times a buffer must be able to accommodate data of a particular size (Col. 3, ln. 24-34, "buffer memory allocator 80 uses the packet size information obtained by the packet monitor 60 to determine the number of buffer units of each type to allocate").

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bakshi by recording, in at least one buffer profile, different data sizes for different ones of data flowing through buffers during an established interval of time and defining a required percentage of times a buffer must be able to

accommodate data of a particular size as taught by Dupont in order to efficiently allocate buffers for the storage of variable-sized data packets, for example “small packets do not have to be stored in large buffer units that could otherwise hold a data packet, and conversely, a large data packet does not have to be segmented into a plurality of smaller segments for storage in smaller buffer units” (Dupont: Col. 4, ln. 39-43).

Bakshi and Dupont are silent on a plurality of buffers.

However, Koval discloses a plurality of buffers (Abstract; Fig. 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bakshi and Dupont by including a plurality of buffers as taught by Koval in order to “efficiently stream or transfer data in real-time” (Koval: Col. 3, ln. 1-3) by controlling “the size of and how many stream buffers are allocated” (Koval: Col. 2, ln. 57-63).

8. As to claim 2, Bakshi, Dupont, and Koval disclose the invention substantially as in parent claim 1, including said recording step (Dupont: see claim 1 above) further comprises the step of varying delays between consecutive input/output operations in said communications system (Bakshi: Col. 4, ln. 38-44; Col. 4, ln. 60-64) to affect how much data flows between said communication system and an application coupled to said communications system (Dupont: Col. 4, ln. 25-29).



9. As to claim 3, Bakshi, Dupont, and Koval disclose the invention substantially as in parent claim 1, including said monitoring step (Bakshi: see claim 1 above) comprises the step of monitoring said data for each connection in said communications system (Bakshi: Fig. 4, items 410 and 420; Col. 5, ln. 6-11, "wait for an incoming request... the process determines whether a server is in an overloaded state"; Col. 1, ln. 15-21; Col. 4, ln. 50-54).

10. As to claims 14-16, the claims are rejected for reasons similar to claims 1-3, respectively, above.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (9:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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